



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9699-9]

### **Proposed Consent Decree Relating to the New Source Performance Standards for Municipal Solid Waste Landfills**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Proposed Consent Decree; Request for Public Comment.

**SUMMARY:** In accordance with of the Clean Air Act, as amended ("Act"), notice is hereby given of a proposed consent decree to settle an action in the United States District Court for the Southern District of New York (Environmental Defense Fund v. Jackson, Case No. 11 Civ. 04492 (KBF) ECF Case) alleging that EPA failed to perform its obligations under the Act as they relate to the new source performance standards ("NSPS") for municipal solid waste landfills ("MSW Landfills"). The Act requires EPA to review, and if appropriate, revise NSPS not later than 8 years after their promulgation unless EPA determines that such review is not appropriate in light of readily available information on the efficacy of the standard. Under the terms of the proposed consent decree, EPA agrees that: (1) by May 1, 2013, EPA shall: (i) perform an appropriate review and sign for publication one or a combination of the following: (A) a proposed rule containing revisions to the MSW Landfills NSPS; or (B) a proposed determination not to revise the MSW Landfills NSPS; or (ii) sign for publication a determination that review is not appropriate; and, (2) if EPA signs a proposed rule or a proposed determination, then no later than May 1, 2014, sign one or a combination of the following: (i) a final rule containing revisions to the MSW Landfills NSPS, based on appropriate review; or, (ii) a final determination not to revise the MSW Landfills NSPS, based on an appropriate review.

**DATES:** Written comments on the proposed consent decree must be received by [INSERT DATE 30 DAYS AFTER PUBLICATION DATE].

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA-HQ-OGC-2012-0490, online at [www.regulations.gov](http://www.regulations.gov) (EPA's preferred method); by e-mail to [oei.docket@epa.gov](mailto:oei.docket@epa.gov); by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW, Washington, DC 20460-0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD-ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

**FOR FURTHER INFORMATION CONTACT:** Richard H. Vetter, Air and Radiation Law Office, Office of General Counsel, U.S. Environmental Protection Agency, at Office of Air Quality Planning and Standards, Sector Policies and Program Division (D205-01) 109 T.W. Alexander Drive, Research Triangle Park, NC 27711; telephone: (919) 541-2127; fax number (919) 541-4991; email address: [vetter.rick@epa.gov](mailto:vetter.rick@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Additional information about the proposed settlement agreement.**

This proposed consent decree would potentially resolve a law suit filed in the U.S. District Court for the Southern District of New York by the Environmental Defense Fund (EDF). EDF alleges that EPA failed to perform its obligations under section 111(b)(1)(B) of the Act, 42 U.S.C. § 7411(b)(1)(B), as they relate to the new source performance standards ("NSPS") for municipal solid waste landfills ("MSW Landfills"), 40 C.F.R.

Part 60, Subpart WWW (40 C.F.R. §§ 60.750 – 60.759). Section 111(b)(1)(B) of the Act requires EPA to review, and if appropriate, revise NSPS not later than 8 years after their promulgation unless EPA determines that such review is not appropriate in light of readily available information on the efficacy of the standard. Under the terms of the proposed consent decree, EPA agrees that: (1) by May 1, 2013, EPA shall: (i) perform an appropriate review and sign for publication one or a combination of the following: (A) a proposed rule containing revisions to NSPS Subpart WWW; or (B) a proposed determination not to revise NSPS Subpart WWW; or (ii) sign for publication a determination that review is not appropriate; and, (2) if EPA signs a proposed rule or a proposed determination, then no later than May 1, 2014, sign one or a combination of the following: (i) a final rule containing revisions to NSPS Subpart WWW, based on appropriate review; or, (ii) a final determination not to revise Subpart WWW, based on an appropriate review.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment submitted, that consent to this proposed consent decree should be withdrawn, the terms of the consent decree will be affirmed and the consent decree will be submitted for entry by the court.

## **II. Additional information about commenting on the proposed consent decree.**

### *A. How Can I Get A Copy Of the Consent Decree?*

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2012-0490) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

An electronic version of the public docket is available through [www.regulations.gov](http://www.regulations.gov). You may use the [www.regulations.gov](http://www.regulations.gov) to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search”.

It is important to note that EPA’s policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at [www.regulations.gov](http://www.regulations.gov) without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA’s policy is that copyrighted material, including copyrighted material contained in a public comment, will

not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

*B. How and To Whom Do I Submit Comments?*

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period.

Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the [www.regulations.gov](http://www.regulations.gov) website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of

your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: July 5, 2012.

Patricia A. Embrey,  
Acting Associate General Counsel.

[FR Doc. 2012-17627 Filed 07/18/2012 at 8:45 am; Publication Date: 07/19/2012]